No. 9681

In the United States Circuit Court of Appeals for the Ninth Circuit

AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, LOCAL NO. 207, APPELLANT

v.

WALTER P. SPRECKELS, INDIVIDUALLY AND AS REGIONAL DIRECTOR, 21ST REGION, OF THE NATIONAL LABOR RELATIONS BOARD, APPELLEE

BRIEF FOR THE APPELLEE

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INDEX

AUTHORITIES CITED

Cases—Continued. Page

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JURISDICTION

This case is before the Court on an appeal from a decree of the United States District Court, Southern District of California, Central Division, dismissing the complaint in an action for an injunction.

STATEMENT OF THE CASE

Proceedings before the Board

The action arises out of a proceeding before the National Labor Relations Board, under Section 9 (c) of the National Labor Relations Act, for the investigation and certification of representatives.[1] The steps in that

[1] *Matter of Cudahy Packing Company* and *Packing House Workers Organizing Committee, C. I. O.*, Case No. R–1718, 22 N. L. R. B., No. 83; 24 N. L. R. B., No. 32.

proceeding are detailed in the Board's Direction of Election and Certification of Representatives which appear in the record (R. 29–48). Briefly summarized, they are as follows:

On October 17, 1939, Packing House Workers Organizing Committee, C. I. O., herein called P. W. O. C., filed with the Regional Director for the Twenty-first Region of the National Labor Relations Board a petition, pursuant to Section 9 (c) of the Act and Article III of the Board's Rules and Regulations, Series 2, alleging that a question of representation affecting commerce had arisen among the employees of Cudahy Packing Company at Los Angeles, and that a majority of the employees in the unit involved had designated P. W. O. C. as their collective bargaining representative, and requesting the Board to conduct an investigation and certify the representative designated by a majority of the employees in the unit in question (R. 29). On October 20, 1939, notice was given to the appellant and the Company of the filing of the petition by P. W. O. C. and of its claim to designation as collective bargaining representative by a majority of the employees in the unit (R. 36). On December 22, 1939, the Board ordered an investigation and authorized the Regional Director to conduct it and provide for appropriate hearing on due notice (R. 29). The Regional Director, appellee herein, pursuant to such order and authorization of the Board, served notices of hearing on the appellant, the employer, and P. W. O. C. (R. 29). Pursuant thereto, a hearing was held before a Trial Examiner from January 25 to February 12, 1940, in which appellant, given full opportunity to be heard, to exam-

ine and cross-examine witnesses, and to introduce evidence, appeared and was represented by counsel (R. 29–30). On March 14, 1940, pursuant to notice, oral argument was had before the Board, in which counsel for appellant participated (R. 31). On April 17, 1940, the Board issued its Decision and Direction of Election (R. 29–46), in which the Board directed the Regional Director, appellee herein, to conduct an election by secret ballot in order to ascertain the employees' choice of representative as between appellant and P. W. O. C. (R. 29–46).[2]

Pursuant to the Board's Direction of Election, appellee on May 16, 1940, conducted an election by secret ballot, and on May 17, pursuant to the Board's Rules, issued and served his Election Report on all parties (R. 47). Neither appellant nor any other party filed any objection to the conduct of the election or the Report (R. 47). The Report showing that a majority of the votes were cast in favor of P. W. O. C., the Board, on June 6, 1940, issued its formal Certification of Representatives, certifying P. W. O. C. as the collective bargaining representative of the employees in the unit in question (R. 46–48).

Proceedings before the District Court

After the conclusion of the proceeding before the Board, the appellant, on July 1, 1940, instituted an ac-

[2] In its Decision the Board held that a closed-shop contract, purported to have been entered into between appellant and the employer on November 2, 1939, after notice to them of the filing of the petition and of the claim of the petitioning union to its designation as collective bargaining representative by a majority of the employees, was not a bar to the election (R. 34–39).

tion for an injunction against the appellee and the Board in the District Court (R. 26–27).[3] On motions of the appellee and the Board, respectively, the complaint in that action was dismissed as to appellee for lack of jurisdiction of the subject matter, and the summons quashed as to the Board for lack of personal jurisdiction over it (R. 26–27).

Thereupon, on July 22, 1940, appellant instituted this present action against appellee "individually and as Regional Director, 21st Region," the complaint in which (R. 2–16) alleged that appellant was a labor organization, that in October 1938 it was chosen as collective bargaining representative by a majority of the employees in a consent election held under Board auspices, and that on November 2, 1939, it entered into a contract with the Cudahy Packing Company (R. 2–3),[4] and, in substance, that the various steps taken by appellee in the representation proceeding above described constituted an interference with its contract (R. 4–6). The relief sought by appellant is that appellee be enjoined from thus interfering with its con-

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[3] *Amalgamated Meat Cutters & Butcher Workmen of N. A. Local #207* v. *National Labor Relations Board and Walter P. Spreckels, Regional Director, 21st Region* (S. D. Cal. C. D., Civil No. 1052H). But for the inclusion of the Board in that case as a party, the complaint there was identical in subject matter and relief sought to the complaint in the instant case (R. 26).

[4] The date of the entry into the contract, as appears from the record (R. 36–37), was 16 days after the filing of the petition by P. W. O. C. and 13 days after appellant and the employer were notified of the filing of the petition and the petitioning union's claim to a majority.

tract or conducting further hearings or elections in the matter (R. 7–8).

Appellee thereafter filed a motion to dismiss the complaint (R. 21–49), which was heard by the court below on July 30, 1940 (R. 49). On August 3, 1940, Honorable Leon R. Yankwich, Judge of the court below, rendered his decision (R. 56–57), and on August 13, 1940, entered his decree (R. 57–60) dismissing the complaint on the various grounds there stated. After instituting unsuccessful mandamus proceedings against Judge Yankwich,[5] appellant filed its present appeal (R. 60).

QUESTION PRESENTED

Appellant in its brief (p. 5) poses a number of questions which are in no way presented by its complaint. The basic question is whether, notwithstanding the exclusive procedure provided in the National Labor Relations Act for the matters complained of, the District Court possesses jurisdiction to enjoin an agent of the Board from the performance of his official functions. The subsidiary questions are whether the complaint alleges a cause of action entitling appellant to injunctive relief, and whether the matters sought to be enjoined are moot and whether the Board is an indispensable party to the action.

SUMMARY OF ARGUMENT

I. The United States District Court is without jurisdiction of the subject matter of the complaint.

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[5] *Amalgamated Meat Cutters* v. *Honorable Leon R. Yankwich, Judge*, C. C. A. 9, No. 9592, decision rendered October 21, 1940, denying petition for mandamus.

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The matters set forth in the complaint are governed by the procedure set forth in the Act and the jurisdiction conferred upon the Board and the reviewing Circuit Courts of Appeals is exclusive.

II. The complaint fails to state a cause of action warranting injunctive relief within the jurisdiction of the District Court.

A. The complaint fails to set forth facts showing that any right of appellant is invaded by appellee or that appellant is threatened with irreparable damage cognizable in equity as a result of any matters complained of.

B. The procedure of the Act, by its terms, affords a full, adequate, and complete administrative remedy for any of the matters complained of in the complaint which appellant has failed to exhaust.

III. The matters sought to be enjoined, in addition to being moot, are those which only the Board can perform and not the appellee Spreckels as a subordinate agent. The complaint must therefore be dismissed for lack of jurisdiction over the Board, an indispensable party.

ARGUMENT

I

The United States District Court is without jurisdiction of the subject matter of the complaint

A. Under the terms and provisions of the Act, the matters set forth in the complaint are within the exclusive jurisdiction of the Board in the first instance, subject to ultimate review, as provided thereunder, by the Circuit Court of Appeals

Appellant, at this late date, raises an issue which has been conclusively determined by the highest judicial

authority. It is plain that the allegations of the complaint (R. 2–9), stripped of conclusions and factually unsupported inferences which permeate it, are based upon the routine performance by the appellee of his functions as Regional Director in a proceeding under Section 9 (c) within the exclusive jurisdiction of the Board, such as "publishing notices of hearing" and "giving notices of an election" (R. 4), and upon the performance by the Board of acts within its exclusive jurisdiction, such as conducting a hearing in Washington, and issuing the Direction of Election and Certification of Representatives in question (R. 5; 29–48).

The complaint, "so uncertain in aim and so meagre in particulars" as to "fall short of the standard of candor and precision" required of a complainant in an injunction action,[6] is not clear as to the basis for appellant's grievance, but it appears to be that the rights which it claims under the contract of November 2, 1939, are alleged to have been invaded by the representation proceeding. Plainly, the matter in question is one within the exclusive jurisdiction of the Board, for whether or not the purported contract was a bar to the proceeding of the Board and to the action taken by appellee, as agent of the Board within such proceeding, is a question which the Board is required to deal with and determine in a representation proceeding. Nothing is now more firmly established than that these matters, involving the application of the provisions of the Act in a given situation, have been vested by Con-

[6] Cf. *Hegeman Farms Co.* v. *Baldwin*, 293 U. S. 163, 170.

gress exclusively in the Board for decision,[7] and that a District Court is without jurisdiction to interfere with the Board or its agents in exercising such jurisdiction. To hold otherwise "would, . . . in effect, substitute the District Court for the Board as the tribunal to hear and determine what Congress declared the Board exclusively should hear and determine in the first instance." *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41, 48, 50. A complaint which seeks to have the District Court pass upon matters so vested in the Board for determination presents "an insuperable objection to the maintenance of the suit in point of jurisdiction," *idem,* p. 52; *Newport News Shipbuilding Co.* v. *Schauffler,* 303 U. S. 54. This Court has held to the same effect in *Carlisle Lumber Company* v. *Hope,* 83 F. (2d) 92 (C. C. A. 9, 1936). In accord also are the various District Courts of this Circuit, in addition to the court below in the instant case, which had passed on this question. *Bethlehem Shipbuilding Corp.* v. *Nylander,* 14 F. Supp. 201 (Stephens, J.); *Aircraft Workers Union, Inc.* v. *Nylander* (S. D. Calif. Yankwich, J.), decided August 18, 1937, No. 1230–M; *Northrup Corporation* v. *Nylander* (S. D. Calif., Yankwich, J.), decided August 18, 1937, No. 1235–H; *Amalgamated Meat Cutters & Butcher Workmen of North America, Local No. 207* v. *National Labor Relations Board and Walter P. Spreckels, Regional Director, 21st Region* (S. D. Calif., Harrison, J.), decided July 12, 1940, No. 1052–H;

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[7] Subject, of course, to ultimate review by the Circuit Court of Appeals under Section 9 (d), 10 (e), and 10 (f) of the Act (see *post*, p. 15).

and this rule applies to representation proceedings under Section 9 (c) with the same force and effect as unfair labor practice proceedings under Section 10. *Heller Bros.* v. *Lind* (6 cases), 86 F. (2d) 862 (C. A. D. C.), cert. den. 300 U. S. 672; *Clark* v. *Lindemann & Hoverson Co.* (7 cases), 88 F. (2d) 59 (C. C. A. 7); *Bradley Lumber Co.* v. *Labor Board, et al.,* 84 F. (2d) 97 (C. C. A. 5), cert. den. 299 U. S. 559.

So imbedded is the doctrine of the Board's exclusive jurisdiction with respect to matters arising under the Act that the courts have refused to take jurisdiction even of suits *inter partes* which present for determination questions arising peculiarly under the Act. Thus, in *International Brotherhood of Teamsters* v. *International Union of United Brewery Workers,* 106 F. (2d) 871, 876, this Court held that an action does not lie in a federal court for a declaratory judgment determining a collective bargaining agent; since the unions "have an administrative tribunal established by Congress for the specific purpose of determining the controversy concerning the bargaining agent, the decision of that tribunal, and not the federal court, first should have been sought" (p. 876). To the same effect are *United Electrical, Radio & Machine Workers of America* v. *International Brotherhood of Electrical Workers,* 115 F. (2d) 488 (C. C. A. 2), and *Blankenship et al.* v. *Kurfman et al.,* 96 F. (2d) 450 (C. C. A. 7).

Appellant seeks to establish a basis for the District Court's jurisdiction by alleging that the acts of appellee have been performed and the proceedings of the Board had been undertaken without justification or ex-

cuse in law or in fact. This blanket assertion cannot deprive the Board of its exclusive jurisdiction and vest it in the District Court. As the Supreme Court declared in *Myers* v. *Bethlehem Shipbuilding Corp., Ltd., supra,* at pages 51–52:

> Obviously, the rule requiring exhaustion of the administrative remedy cannot be circumvented by asserting that the charge on which the complaint rests is groundless and that the mere holding of the prescribed administrative hearing would result in irreparable damage. Lawsuits also often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact.

Plainly, the matters complained of by appellant fall within the purview of the Board's exclusive jurisdiction as vested in it by Congress, and the two District Judges below, following a long line of unbroken authority, correctly recognized that the subject matter of appellant's complaint lay beyond the jurisdiction of the District Court.

II

The complaint fails to state a cause of action warranting injunctive relief within the jurisdiction of the district court

A. The complaint fails to set forth facts showing that any right of appellant is invaded by appellee, or that it has sustained irreparable damage cognizable in equity as a result of the acts complained of

As heretofore stated, the complaint is permeated with statements of unsupported conclusions and inferences. Stripped of these matters, it is clear that

the sole basis of the complaint is the routine performance by the Board and appellee of their functions and duties under the Act. This is made plain from the nature of the only specific conduct which appellant attributes to appellee as the basis for its grievance, such as appellee's publishing notices of hearing and giving notices of an election to be held in the representation proceeding (R. 4), and "causing" the Board to hold a hearing in Washington and to issue the Direction of Election and Certification in question (R. 5).[8] That the performance of these official functions is the sole basis of the injunctive relief sought is further shown in the prayer for relief in which the only specific conduct sought to be restrained is the "holding [of] any hearing or election for the selection of collective bargaining agent, or any certification or designation of collective bargaining agent for said employees" (R. 7).

In addition to the fact that all of the acts sought to be restrained have already been performed (see *post* p. 16), the complaint is barren of a showing that any right of appellant is being invaded or that it is

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[8] Appellant includes other allegations which are plainly not allegations of fact but mere inferences and conclusions which it draws from appellee's conducting the hearing and election in question, such as "intimidation" of the employer and employees from performing the terms of the contract, "authorizing and encouraging" Harry Bridges to make assertions with reference to the validity of the contract and the future designation of a bargaining agent by the Board (R. 4) and, after the Board's certification, "advising and encouraging" the C. I. O. to negotiate a new contract with the employer (R. 5).

being threatened with irreparable damage cognizable in equity in consequence of the matters complained of. Appellant admits that "the mere existence of a contract" constitutes no "bar to election or to certification proceedings" (App. br. p. 16). The Board, faced with that question held, pursuant to its long-established policy, and with obvious correctness, that this contract, entered into after notice to the parties of filing of the petition under Section 9 (c) and of the petitioning union's claim to a majority (R. 36–37), was not a bar to the election to determine the employees' choice of representatives (see *Third Annual Report of the Board,* pp. 134–138 and cases cited).[9] Thereafter an election was held, and, on the basis of the results, which appellant has never questioned, the Board issued its Certification. Obviously, no right of appellant was or could have been invaded by the proceeding.

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[9] Appellant, in support of its assertion that the Board did not follow its established practice in the instant case, has quoted from the book "The National Labor Policy and How it Works," written by Mr. Joseph Rosenfarb, one of the attorneys on this brief. (App. Br. p. 18.) The author desires to point out that the portion quoted is inapplicable, and that the applicable portion is the paragraph on page 267 immediately preceding appellant's quotation and reading (with the footnotes omitted):

"The factor of the duration of the contract is particularly significant with reference to the time when the proceedings for investigation and certification are undertaken. *A contract is no bar to an election or certification when entered into or renewed after board proceedings for an investigation and certification have been started; when the petition has been filed or notice of claim of majority has been given to the employer before the date of the renewal of the contract or the date when notice of abrogation is to be given under the terms of the contract.*" [Italics supplied.]

The proceeding did not adjudicate the validity of the contract, but merely ascertained the employees' choice of representative. The impairment to appellant's "prestige" or the failure of the employer in view of the results of the election, thereafter to perform its purported closed-shop contract with the appellant, are not required by the certification of the Board or any action of the appellee, and, in any event, are mere incidents of carrying out the law of the land, which imposes on the Board the power and the duty, in the interest of allaying industrial strife and protecting commerce, to resolve disputes over representation by ascertaining and certifying the employees' free choice of representatives. Nor does appellant strengthen its position by urging that somewhere in its complaint may be found matter which "in substance" alleges "that the motive of the defendant in causing the machinery of the Act to be set in motion was exactly that of choking off the life of the contract" (App. br. p. 16). The answer is first that the "machinery of the Act" is under the control of the Board and not this defendant (see *post* pp. 16–19) and, secondly, equity jurisdiction cannot be predicated upon imputations of bad faith to a public official in the performance of his duties. *Continental Baking Co.* v. *Woodring,* 286 U. S. 352; *Lehman* v. *Board of Accounting,* 263 U. S. 394; *E. I. Dupont de Nemours & Co.* v. *Boland,* 85 F. (2d) 12, 14 (C. C. A. 2).

Not only is no showing made of any invasion of appellant's rights, but there is no showing of damage warranting injunctive relief. The injuries which appellant alleges, such as impairment of its "prestige" and loss of members in consequence of its being outvoted in the election, are not matters of which equity

can take cognizance without stopping the very process of Government itself. The Courts have described them as "part of the social burden of living under government," and as "not the irreparable damage as to which equity will interfere to prevent." *Heller* v. *Lind,* 86 F. (2d) 862 (App. D. C.), cert. den. 300 U. S. 672; *Myers* v. *Bethlehem Shipbuilding Corp., supra.,* at p. 53; *Newport News Shipbuilding Co.* v. *Schauffler, supra; Bradley Lumber Co.* v. *Labor Board, supra,* at p. 100.

B. The procedure of the National Labor Relations Act, by its terms, affords a full, adequate, and complete administrative remedy for any of the matters complained of in the complaint, which appellant has failed to exhaust

There being nothing alleged which requires "remedy," we need not labor the obvious point that appellant has been derelict in failing to exhaust its administrative remedies under the Act.

The proper forum for considering the appellant's objections, if any, was not the District Court but the Board itself. The Board was entitled to and had the exclusive jurisdiction, under the Act, in the first instance, to pass upon appellant's objections in connection with the general question of whether the proceeding had been conducted with due regard to the rights of the parties and in such a manner as to reflect the free choice of the employees. *Matter of Tennessee Copper Co.,* 8 N. L. R. B. 575; *Matter of Cudahy Packing Co.* (Kansas City, Kans.), 26 N. L. R. B., No. 81; *Matter of Walker Vehicle Co.,* 7 N. L. R. B. 827; *Matter of Pennsylvania Greyhound Lines,* 4 N. L. R. B 271.

The complaint is barren of any showing that the matters which it here complains of were raised before the Board.[10]

Appellant, having failed to exhaust its remedies before the Board itself, is not in a position to raise the question as to whether its remedy thereafter would have been in the District Court or in the Circuit Court of Appeals (App. Br. p. 24). We submit, however, that, assuming, contrary to the record, that appellant had raised all its objections before the Board, its remedy even thereafter would be governed exclusively by the procedure of the Act. Section 9 (d) of the Act provides that if the Board should in another proceeding, pursuant to Section 10, issue an order based, in whole or in part, on its certification, then a proceeding under Section 10 (e) or (f) to enforce or review such order brings up for review the record of the certification as well. As repeatedly stated by the Courts, and as recognized by the Court below, the remedies provided in the Act are "exclusive" and the exclusive jurisdiction conferred thereunder may not be interfered with by the District Courts. *Myers* v. *Bethlehem Shipbuilding Corp., supra; Newport News Shipbuilding Co.* v. *Schauffler, supra;* see also *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, 46–47; *American Federation of Labor* v. *National Labor Relations Board,* 308 U. S. 401, 411.

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[10] On the contrary, it will be recalled that appellant, although fully participating in the Board proceeding, raised no objection to the conduct of the election or to the Election Report which appellee filed with the Board and served on all the parties (R. 47, *supra*, p. 3).

III

The matters sought to be enjoined, in addition to being moot, are those which only the Board can perform and not the appellee Spreckels as a subordinate agent. The complaint must therefore be dismissed for lack of jurisdiction over the Board, an indispensable party

The only specific conduct which appellant seeks to enjoin is the "holding of any hearing or election for the selection of collective bargaining agent, or any certification or designation as collective bargaining agent for said employees" (R. 7). The hearing and election sought to be enjoined were held and the certification issued prior to the commencement of the action (R. 29–49; *ante* pp. 2–3). The case before the Board was thus concluded and there is no showing that any further hearing, election, or certification involving the employees in question is threatened or impending. The action as to these matters is therefore moot. *Richardson* v. *McChesney,* 218 U. S. 487; *Wingert* v. *First National Bank,* 223 U. S. 670. As stated by the Supreme Court in *Newport News Co.* v. *Schauffler, supra,* p. 58:

> To the extent that relief was sought to prevent the injury resulting from a hearing, the cause appears to be moot.

The question of mootness aside, the acts sought to be enjoined are those which only the Board can perform or the appellee can undertake only at the direction of the Board. The certification of representatives can only be issued by the Board. A hearing or an election can only be supervised by the appellee, and only under the direction of the Board. Therefore, if appellant should be

granted the injunction it seeks, the real party enjoined would be the Board and not the appellee. The Board is thus an indispensable party, the absence of whom is fatal to the maintenance of the action. *Gnerich* v. *Rutter,* 265 U. S. 388, 391–392; *Webster* v. *Fall,* 266 U. S. 507, 510; *Moore* v. *Anderson,* 68 F. (2d) 191 (C. C. A. 9); *Moody* v. *Johnston,* 66 F. (2d) 999 (C. C. A. 9); *Raichle* v. *Federal Reserve Bank,* 34 F. (2d) 910, 916 (C. C. A. 2); *Alcohol Warehouse Corp.* v. *Canfield,* 11 F. (2d) 214, 215 (C. C. A. 2); *Natl. Conference on Legalizing Lotteries* v. *Goldman* and companion cases, 85 F. (2d) 66, 67, 68 (C. C. A. 2). In the *Gnerich* case, the Supreme Court dismissed a bill against a local prohibition commissioner for failure to join his superior, the Commissioner of Internal Revenue, under whose direction the acts sought to be enjoined were performed. The Court stated (p. 391):

> * * * The prohibition commissioner and the prohibition director are mere agents and subordinates of the Commissioner of Internal Revenue. They act under his direction and perform such acts only as he commits to them by the regulations. They are responsible to him and must abide by his direction. What they do is as if done by him. *He is the public's real representative in the matter, and, if the injunction were granted, his are the hands which would be tied.* All this being so, he should have been made a party defendant—the principal one—and given opportunity to defend his direction and regulations. *Litchfield* v. *Register and Re-*

> *ceiver,* 9 Wall. 575, 578; *Plested* v. *Abbey,* 228 U. S. 42, 50–51. [Italics supplied.]

The Supreme Court also cited *Warner Valley Stock Co.* v. *Smith,* 165 U. S. 28, with the following discussion of the case which is apposite here (p. 392):

> There an injunction was sought against the Secretary of the Interior and the Commissioner of the General Land Office to prevent them from giving effect to prior orders of the Secretary alleged to be outside his powers and hurtful to the plaintiff. While the suit was pending the Secretary resigned his office and there was at that time no way of bringing his successor into the suit. So, the question arose whether it could be continued against the Commissioner alone. The answer was in the negative, the Court saying, p. 34:
>
> "The purpose of the bill was to control the action of the Secretary of the Interior; the principal relief sought was against him; and the relief asked against the Commissioner of the General Land Office was only incidental, and by way of restraining him from executing the orders of his official head. To maintain such a bill against the subordinate officer alone, without joining his superior, whose acts are alleged to have been unlawful, would be contrary to settled rules of equity pleading." Calvert on Parties (2d ed.), bk. 3, c. 13.

This Court, on the authority of the cases of *Gnerich* v. *Rutter* and *Webster* v. *Fall, supra,* has held that the complaint in a suit to enjoin local federal officers from refusing to deliver a quantity of water to which

plaintiffs claimed to be entitled under a contract with the United States was defective in the absence of the Secretary of the Interior as a party. *Moore* v. *Anderson,* 68 F. (2d) 191 (C. C. A. 9). See also *Moody* v. *Johnston,* 66 F. (2d) 999 (C. C. A. 9).

The Board is a necessary party which has not and, because of the official residence of the Board and its members in the District of Columbia, cannot be brought within the jurisdiction of the court below (Judicial Code, Sec. 51, 28 U. S. C. A. § 112; *International Molders Union* v. *National Labor Relations Board,* 26 F. Supp. 423 (E. D. Pa.); *Amalgamated Meat Cutters* v. *National Labor Relations Board et al.* (S. D. Cal. C. D. No. 1052H). That alone, independently of the utter want of equity on the face of the complaint, was sufficient to require dismissal of the bill.

CONCLUSION

It is clear that the complaint is completely lacking in a showing of jurisdiction in the lower court over the subject matter; that the matter alleged is, under the Act, and, as repeatedly held by the Circuit Courts and the United States Supreme Court, within the exclusive jurisdiction of the Board; that no showing has otherwise been made warranting equity intervention; that the complaint is defective because of absence of jurisdiction over the Board, an indispensable party; and that the action, with respect to the matter sought to be enjoined, is moot.

It is respectfully submitted that the decision and decree of the court below, dismissing the complaint, were proper and should be affirmed.

Respectfully submitted.

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